

In the Supreme Court of the Hawaiian Islands.

DECEMBER TERM, 1893.

WONG CHAN VS. AH YONG AND AH WAI, DOING BUSINESS UNDER THE NAME OF "HO FON" AND YONG AHOI.

BEFORE JUDGE, C. J., RICKERTON AND FREAR, JJ.

BILL IN EQUITY TO DECLARE A TRUST.

The plaintiff deposited a sum of money with Y. A. and A. W. as advance rent on a lease which they agreed to obtain for him. The lease was obtained, but was made to A. W. and A. H. as partners.

Held, that the decree declaring A. W. and A. H. to be trustees for plaintiff of the lease and ordering them to assign the same to plaintiff should be affirmed. If A. H. was ignorant of the fraud he is bound by the fraud of his partner A. W., the transaction being a contract relating to the copartnership.

Y. A. was employed by A. H. as an agent to procure the lease. He deceived plaintiff in taking the lease to A. W. and A. H.

Held, that A. H. having put confidence in Y. A. should be the loser rather than the plaintiff.

OPINION OF THE COURT BY JUDGE, C. J.

The defendants appeal from the decree of Judge Cooper, declaring a trust and ordering an assignment by defendants to plaintiff of the lease.

Following is Judge Cooper's decision:

"The bill alleges that the defendants Yong Ahoi and Ah Wai undertook to procure for the plaintiff a lease of a certain tract of land in Kewalo, Puna, Oahu, and for such purpose the plaintiff paid them eighty dollars; that the defendants wrongfully and to the fraud of the plaintiff procured such lease in the name of Ah Yong and Ah Wai doing business under the name of Ho Fon.

Wherefore the plaintiff prays that the defendants be declared the trustees of such lease and demised premises for his benefit.

The defendants deny the allegations of the bill and further set forth that the defendant Ah Yong is a bona fide holder of the said lease.

The decision of this case involves merely a determination of the facts, the law being beyond dispute. The testimony introduced by the defendants was in direct conflict with that of the plaintiff, but I find no difficulty in determining which of the witnesses were telling the truth.

In order to substantiate the testimony of Yong Ahoi I must disbelieve the evidence given by Mr. Booth who testified as to the admissions of both of the defendants, his evidence being corroborated by Kawaiho. Also Ah Hong, Ah Kau and the plaintiff who testified to the payment of the money, also Mrs. Lydia Pihoi Kamakaina who says that before she consented to give the lease, Yong Ahoi told her that he had made arrangements with the plaintiff who was in possession of the land.

The manner of the witnesses Yong Ahoi and Ah Wai while giving their evidence was decidedly against them. The bravado and contempt expressed by them in their denials of important points, in conjunction with the unshaken testimony of the witnesses for the plaintiff, satisfy me that neither of them were telling the truth.

I find, therefore, that the defendants, Yong Ahoi and Ah Wai, did undertake to procure the lease for the plaintiff, and that they received the sum of \$80 with which to make the first payment. As to Ah Yong, if in fact he be the person who was present and testified, he is but the agent of Yong Ahoi and was fully informed as to the relations of the parties, and is not entitled to any protection."

BY THE COURT.

Mr. Castle, for defendant, urges upon us that Yong Ahoi, one of the defendants, is not shown to have any interest in the lease. This appears to be true for the lease was made to Ah Yong and Ah Wai partners under the name of "Ho Fon," and the name of Yong Ahoi does not appear upon the lease actually made by the lessor. But the decree does not undertake to bind him and from all that appears he need not have been made a party except as a co-conspirator with Ah Wai in obtaining the lease in fraud of the plaintiff. But Yong Ahoi had a very close connection with defendants. In conversation with plaintiff and others, Yong Ahoi, after the lease in question had been obtained, spoke of it as his own, and offered to lease the premises to plaintiff for \$300 per annum.

It is also urged by Mr. Castle that Ah Yong is not shown to have participated in the transaction, except that he became a lessee by signing the lease with his partner Ah Wai. There is evidence that his name was inserted in the lease by the direction of Yong Ahoi, who is Ah Wai's brother; and it appears to us from the evidence that though Yong Ahoi was the main actor in this business with the plaintiff and the lessor, so that the lessor, Lydia Pihoi Kamakaina, supposed that the lease was to be made to him alone, he had Ah Yong's name inserted in the lease with Ah Wai in order to conceal his own share or agency in the transaction, intending in some way to reap the benefit of it.

There is another view that can be taken of Ah Yong's liability. By his own admission, he was unfamiliar

with the business of making leases, and employed Yong Ahoi to attend to it for him, saying that Yong Ahoi "was an old hand at it." Making Yong Ahoi his agent for this purpose, he is liable to the plaintiff for the fraud and deceit committed by Yong Ahoi in the course of the business. The principle is that "since somebody must be the loser by the deceit, it is more reasonable that he who employs and puts confidence in the deceiver should be a loser than a stranger."

I Engei, law, p. 417. But Ah Wai was a party to the fraud upon the plaintiff, taking the \$80 from him on the promise to get the lease for him, but took the lease to himself and Ah Yong as partners. If Ah Yong was ignorant of the fraud, which is doubtful, he was bound by the fraud of his partner Ah Wai.

"One partner will be bound by the fraud of his copartner, in contracts relating to the copartnership, made with innocent third parties."

Collyer Partnership, Sec. 445. "Each partner being the agent of the firm, the firm is liable for his torts committed within the scope of his agency, on the principle of respondent superior." 1 Bates Partnership, Sec. 461.

Story, in his work on Partnership, Sec. 108, bases the rule upon which the firm is bound by the frauds committed by one partner in the course of the transactions and business of the partnership, when the other partners have no connection with, knowledge of or participation in the fraud, upon the principle that "by forming the partnership the partners declare themselves to the world satisfied with the good faith and integrity of each other, and impliedly undertake to be responsible for what they shall respectively do within the scope of partnership concerns."

On a review of the whole case we are of opinion that the decree of Judge Cooper should be affirmed.

J. A. MAGOON for plaintiff; W. R. CASTLE for defendants.

Honolulu, January 19, 1894.

A HAWAIIAN'S TESTIMONY.

The Truth About M. H. Reuter's Talk at Hana.

MR. EDITOR: Permit a brief reply to M. H. Reuter's statement in your columns. On the 5th of January, after his return, he came into the Hana Court House, and before all who were present, said: "I am going to run for election, and have paid my \$25 as a candidate for the coming February election, before which time the queen will be restored. The Cabinet have all been appointed. D. Center is to be Sheriff of Maui." Reuter challenged the Deputy Collector of Taxes to bet with him, and declared that they would crowd the police of this district to the wall. All those present in the Court House are ready to make affidavit to the truth of the above.

It is clear that Reuter is on the fence. This attitude of his results from his recent association with the royalist officials of Waialua. Are they not going to be dismissed from office? This crooked tergiversation is wretched work. Let a man stand up firm and free on his political platform, whether to live or to die, to be defeated or to triumph, to be poor or to be rich, seeking means for the land to prosper. That is the only sort of man the country has use for.

A FRIEND.

Maui, January 19, 1894.

MONARCHY IN HAWAII.

The Pamphlet Appears, Containing Prof. Alexander's Article.

The pamphlet containing Prof. Alexander's contribution to Blount's report appeared yesterday afternoon, and was eagerly sought after by a large number. It is entitled "Kalakaua's Reign: a Sketch of Hawaiian History," and is in a most convenient form for mailing.

The contents, which were published in daily installments in the ADVERTISER, are a most interesting resume of the reign of the brother of the ex-queen, and are a valuable commentary on that worthy's actions. The corruptions of the times is fully exposed, and such proceedings as the election of 1886, the lottery bill, the Hale Nana, the Jubilee and many other exploits of the late king are ventilated. The book is for sale at this office.

Lodge Officers.

Maile Lodge, No. 4, Knights of Pythias, located at Honokaa, Hawaii, installed the following officers on Saturday night, January 13, for the coming term:

C. C.—M. V. Holmes.
V. C.—Fred S. Clinton.
P.—Joseph P. Ireland.
M. of W.—R. T. Rickard.
K. of R. and S.—Evan W. Estep.
M. of F.—Joe Burkinshaw.
M. of E.—Dr. Greenfield.
M. at A.—Andrew Long.
I. G.—Albert de la Nux.
O. G.—Chas. Loveland.

For Sale—A second-hand throne, cheap. Owner has no further use for it. Address L. Honolulu.—N. Y. Recorder.

COURT NOTES.

In the matter of the guardianship of Henri G. McGrew, before Judge Cooper, the Court appointed Charles L. Carter as guardian under \$5000 bond, the petition alleging that said McGrew is unable to manage ordinary business affairs; the wife of the respondent was in Court and did not offer any objections. A. S. Hartwell for the application; F. M. Wakefield for Mrs. McGrew.

Chief Justice Judd has approved the accounts of the trustees of the estate of Bernice Pauahi Bishop for 1893 and has ordered publication of the inventory of the property in said estate, which appears elsewhere.

Application is also filed for letters of administration on the estate of the late Frank S. Pratt, and March 19th set for the hearing. Value of the property, \$10,000, which, as deceased died intestate, and leaving no children, will go one-half to the widow and one-half to foreign heirs in Boston, Mass. Wm. Foster for the petitioner.

The report of the Trustees of the Kamehameha Schools under the will of the late Hon. Bernice P. Bishop, for the year ending December 31, 1893, filed on the 22d of January, 1894, has had my attention.

The report is accompanied by a report of the principal of the schools, Rev. W. B. Oleson, who retired from the principalship in June last, and whose place is now filled by Mr. Theodore Richards; also an account of the receipts and expenditures of the estate and of the Bernice P. Bishop Museum. These accounts are accompanied by proper vouchers. I do not deem it necessary to refer the account to a master, the estate now being in good running order. As required by the will, the trustees submit an inventory of the property of the estate of Mrs. Bishop, and of the present investments, which I direct to be published in the PACIFIC COMMERCIAL ADVERTISER.

The Hawaiian people are to be congratulated upon the condition of the school.

A. F. JUDD, Chief Justice Supreme Court. Honolulu, Jan. 23, 1894.

THE ESTATE OF B. P. BISHOP—INVENTORY, DECEMBER 31, 1893.

The Trustees return, as in their hands, the whole of the real estate described or referred to in the inventory filed with their accounts last year; also,

(a) The strip of land on the Waikiki side of Emma street, Honolulu, part of the Ili of Kaakopua (L. C. A. 9671, Ap. 29), described in deed of C. L. Hopkins to Trustees, recorded in Lib. 141, on pages 166 and 167. (This land is subject to the life interest of Keaweamahi)—\$9000.

(b) The Ahupuaa of Kalahele, Molokai, being the land described in Royal Patent (grant) 3146 to Charles R. Bishop, containing an area of 46,500 acres; and all its and kuleanas therein belonging to said C. R. Bishop.

But excepting from the said land year's inventory the following pieces of land, which have been sold during the year 1893:

(1) Two house lots at Makiki, on Wilder Avenue, Honolulu, comprising the land described as R. P. (grant) 3583, Apana 2, and the piece or portion of R. P. (grant) 2788, Apana 1, to Lot Kamehameha, lying between R. P. (grant) 3583 and Kewalo street, sold to Fred Harrison March 13, 1893.

(2) The piece of land at Keomuku street, Waikiki, described in L. C. A. 2128, and the strip of land lying between L. C. A. 1511, Ap. 1, to Kane, at Waikiki, and the road; sold to Mr. H. A. Widemann for \$300.

The following personal property has been acquired by the Trustees from the Hon. C. R. Bishop:

(a) The lease of the lands of Kalahele, 6747 acres, Palaua 11,255 acres, and Kapaekes 2175 acres, Molokai, from the Commissioners of Crown Lands, for thirty years from January 1, 1888, at \$1200 a year rental.

(b) All the cattle, horses and live stock running upon the lands comprised within the term "Molokai Ranch."

The Hon. C. R. Bishop surrendered his life-interest in the following lands:

(1) The Ahupuaa of Kanaakakahi, R. P. (grant) 3533, Ap. 1.

(2) All lands belonging to the late B. P. Bishop at Waikiki, Oahu, lying makai of the Government main road to Kapiolani Park.

The Trustees have on hand the following securities and monies:

FOR ACCOUNT OF THE KAMEHAMEHA SCHOOLS.

Government bonds.....\$30,000 00
Promissory notes secured by mortgage of real estate..... 9,990 00

Cash on hand.....\$29,990 00
Total.....\$69,980 00

FOR ACCOUNT OF BERNICE P. BISHOP MUSEUM.

Government bonds.....\$ 6,000 00
Promissory notes secured by mortgage of real estate..... 19,000 00
Cash uninvested..... 5,000 00

Total.....\$30,000 00

Akoi (w.), of Hilo, Hawaii, has appealed from the order of Hon. S. L. Austin dismissing her libel for divorce, and filed her certificate of appeal in the clerk's office. S. K. Kane for plaintiff-appellant; D. H. Hitchcock for Ken Kau, the husband, defendant.

Change of venue has been granted by Judge Austin in the equity

case of M. Bolabola vs. Maria K. Carr and husband, praying for cancellation of an alleged fraudulent deed, given by plaintiff to defendants, which conveys valuable lands situate in Hamakua, in the island of Hawaii. S. K. Kane for plaintiff; C. Creighton for defendants.

Following is a summary of the expenses of the January Term, Fourth Circuit Court, held in Hilo, Hawaii, according to an account filed with the clerk of the Judiciary Department:

Hawaiian jurors.....\$ 68 00
Foreign jurors..... 331 25
Witnesses in criminal cases..... 297 00
Court officials..... 166 85

Total.....\$773 10

W. T. Brigham, curator of the Bernice Pauahi Bishop Museum, has filed a report for the year 1893 in connection with the trustees' return to the Court. We copy the following:

A BRIEF REPORT OF THE WORK OF THE BERNICE PAUHAH BISHOP MUSEUM DURING THE YEAR 1893.

During the past year the resources of the Museum have been largely employed in preparing for the occupation of the new building in course of erection at the cost of Hon. C. R. Bishop, and in this connection the Curator visited the Colonial museums, not only arranging valuable exchanges, but also purchasing many objects and photographs illustrating the life of the Pacific region. These will find their place in the new hall.

The collection have steadily increased in most departments, and most noteworthy is Mr. Bishop's gift of the splendid collection of shells made by the late Andrew Garrett. This is one of the choicest private collections in the world. Mr. G. D. Gilman, of Newton, has given to the Museum his extensive collection of Hawaiian relics, among them very interesting autographs of former Hawaiians.

The Government has loaned to the Museum the priceless feather cloaks, which have been securely placed in cedar cases, where they can readily be seen by visitors while preserved from insects and ordinary decay.

Scientific books, for reference, have been liberally purchased by the Trustees, supplying to that extent a great want in this region, so remote from all scientific libraries.

In the department of ornithology a number of bird skins, nests and eggs have been given by Mr. A. F. Judd, Jr., Mr. Francis Gay and others.

Public interest has largely increased in this Museum, if we may judge by the increased attendance during the two exhibition days each week. This increase is especially noteworthy among the Chinese and Hawaiian visitors. The publication of the catalogue (a copy of which is a part of this report) has given rise to a very considerable foreign correspondence in which great interest is shown in Hawaiian antiquities.

The staff of the Museum has been limited to the Curator, but the very respectable size of this institution renders it impossible for one man to do much more than preserve the contents of the cases in a climate where so many adverse influences exist.

WM. T. BRIGHAM, Curator, B. P. B. Museum. Honolulu, January 23, 1894.

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Total.....Reichsmarks 5,100,000

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—OF HAMBURG—

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Capital their Re-Insurance Companies.....15,000,000
Total.....Reichsmarks 19,800,000

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